

LETTER OF FINDINGS NUMBER: 07-0369**Motor Carrier Fuel Tax
For the Tax Period 3rd and 4th Quarter 2005**

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ISSUES**I. Motor Carrier Fuel Tax – Calculation.**

Authority: IC § 6-6-4.1-4(a); IC § 6-6-4.1-9; IC § 6-6-4.1-20; IC § 6-6-4.1-24(b); IC § 6-8.1-5-4(a).

The Taxpayer protests the Department's calculation of motor carrier fuel tax.

II. Tax Administration - Ten Percent Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; IC § 6-6-4.1-23; [45 IAC 15-11-2](#)(b)(c).

The Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The Taxpayer is a corporation primarily engaged in farming. The Taxpayer also operates an ancillary trucking business. After an audit, Indiana Department of Revenue (Department) assessed motor carrier fuel taxes, interest, and penalty against the taxpayer. The Taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. Motor Carrier Fuel Tax Agreement – Imposition.**DISCUSSION**

The Taxpayer was a trucking concern that operated in Indiana. As such, it operated on Indiana highways and consumed motor fuel. The Department assessed motor carrier fuel taxes pursuant to IC § 6-6-4.1-4(a). The Taxpayer protested the amount of the tax assessed.

Tax assessments of motor carrier fuel tax assessments are presumed to be valid. IC § 6-6-4.1-24(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.* Taxpayers have the duty to maintain books and records and present those to the Department for review upon the Department's request. IC § 6-6-4.1-20; IC § 6-8.1-5-4(a).

The Taxpayer was unable to produce any documentation demonstrating that it had paid the proper amount of tax on the motor fuel it used in its trucking operations. Due to the lack of documentation, the Department assessed tax based on the best information available. The Taxpayer's adjusted total gallons were determined by multiplying the Taxpayer's reported total miles by the estimated amount of fuel used per gallon. The Department estimated that the Taxpayer's trucks used fuel at the rate of four miles per gallon as required by IC § 6-6-4.1-9.

The Taxpayer protested the use of four miles per gallon to determine the truck's per gallon of gasoline usage. The Taxpayer argued that its trucks did not actually travel four miles per gallon. Sometimes the trucks were stationary as they waited for the dirt to haul. Also the trucks were used to transport extremely heavy loads of slate, stone, and dirt up and down hills. Each of these uses would affect the truck's mileage per gallon. IC § 6-6-4.1-9 requires the Department to use four miles per gallon in estimating usage when the Taxpayer's records are inadequate to determine the actual number of miles per gallon of motor fuel used by a particular truck. Therefore, the Department properly used four miles per gallon to determine the Taxpayer's gasoline usage.

The Taxpayer was unable to sustain its burden of proving that this method of determining the miles per gallon of the individual trucks resulted in an incorrect result.

FINDING

The Taxpayer's protest is respectfully denied.

II. Tax Administration - Ten Percent Negligence Penalty.**DISCUSSION**

The Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1 and IC § 6-6-4.1-23. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively

establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The Taxpayer provided substantial documentation to indicate that its failure to pay the assessed motor carrier tax was due to reasonable cause rather than negligence.

FINDING

The Taxpayer's protest to the imposition of the penalty is sustained.

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